

***United States Court of Appeals  
for the Second Circuit***



**EXHIBITS**





No. 76-6150

United States Court of Appeals

FOR THE SECOND CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff-Appellee

v.

LOCAL 14, INTERNATIONAL UNION OF OPERATING ENGINEERS;  
LOCAL 15, INTERNATIONAL UNION OF OPERATING ENGINEERS;  
ET AL., Defendants-Appellants

On Appeal from the United States District Court  
for the Southern District of New York

EXHIBIT VOLUME 5

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2 EQUAL EMPLOYMENT OPPORTUNITY  
3 COMMISSION

4 - v s -

72 Civ. 2498

5 LOCAL 14 INTERNATIONAL UNION OF  
6 OPERATING ENGINEERS, et al.

7 December 12, 1974

8 [10:30 a.m.]

9 *Deborah Sinner*  
10 *J. J. M. M.*  
11 *C. J. M.*  
12 *C. J. M.*  
13 *C. J. M.*  
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9 - - -

10 [Case called.]

11 MR. DEVORKIN: I am not sure if I should introduce  
12 myself after this hiatus.

13 THE COURT: I don't think that is necessary.

14 MR. DEVORKIN: I think if we could take care of  
15 a couple of housekeeping matters before we put on the final  
16 rebuttal witnesses we will be in good shape.

17 THE COURT: All right.

18 MR. DEVORKIN: Your Honor will recall that  
19 plaintiff's Exhibit 91 was an alphabetical list of Local  
20 14 members with their average earnings for the three-year  
21 period and we had made some markings beside each name to  
22 indicate at that time as we knew it the license status as  
23 it were of those individuals and we have had an opportunity  
24 to continue to review the records of the City of New York  
25 and I would like to withdraw 91-A and B and offer instead --

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2 which were simply descriptions of what was on that list,  
3 and offer instead a stipulation between Mr. Kennedy on  
4 behalf of Local 14 and the plaintiff, which essentially  
5 states that the symbols that now appear on the list by vir-  
6 tue of our updating is correct as we know it and the  
7 stipulation will speak for itself.

8 THE COURT: Received.

9 MR. DEVORKIN: That will be 91-A.

10 \*\*\* [Plaintiff's Exhibit 91-A received in evidence.]

11 MR. DEVORKIN: We would also like to offer what  
12 has been marked as Plaintiff's 104 for identification, which  
13 is the Equal Employment Opportunity report EEOQ and its  
14 instruction sheets, essentially -- I have supplied a copy  
15 to counsel -- and 105, which is the EEOC Local Union  
16 report EEO3 with its instructions.

17 I offer these really in conjunction, your Honor,  
18 with what I have marked as Plaintiff's 106-A, 106-B and  
19 107-A, 107-B and 107-C.

20 106-A is Local 14's EEO3 report for 1970 and  
21 106-B is Local 14's report for 1972. 107-A is Local 15 --  
22 A through D -- report for 1970, 107B is its report for  
23 1972 and 107-C is its report for 1973.

24 THE CLERK: Any objection?

25 MR. KENNEDY: I have no objection.

2  
THE COURT: Received in evidence.3  
4  
[Plaintiff's Exhibits 104 and 105 received  
in evidence.]5  
6  
[Plaintiff's Exhibits 106-A, 106-B received  
in evidence.]7  
8  
[Plaintiff's Exhibits 107-A, 107-B and 107-C  
received in Evidence.]9  
10  
11  
MR. DEVORKIN: I may have one exhibit this after-  
noon, but for now that is our documentary record, except  
what comes in through our witnesses.12  
13  
MR. BRADY: Excuse me one moment, your Honor.14  
15  
16  
[Pause.]  
MR. GLASSMAN: The Government calls James McNamara.17  
18  
19  
J A M E S      F R A N C I S      M C N A M A R A, being  
first duly sworn, testified as follows:20  
21  
22  
DIRECT EXAMINATION23  
24  
25  
BY MR. GLASSMAN:26  
Q      Mr. McNamara, by whom are you employed?27  
A      I am employed by the City of New York as Director  
28  
of Contract Compliance in the office of the Mayor.29  
Q      How long have you been so employed?30  
A      I have been employed in the Office of Contract  
31  
Compliance for two years. I have been Director of Contract  
32  
Compliance since October 1973.

2 Q Could you describe for us your duties as Director  
3 of the Office of Contract Compliance?

4 A Basically my duties have to do with enforcement  
5 of mayoral executive orders that deal with equal opportunity  
6 and anti-discrimination in the construction industry.  
7 Any contractor who is doing business with the City of New  
8 York must observe certain mayoral executive orders,  
9 specifically Executive Orders 71 and 20 and those orders  
10 set forth requirements for employment of minorities and  
11 minority training on construction sites.

2 12 Q Do you have any duties in regard to minority  
13 referral sources?

14 A Yes. Our office also includes a unit dealing  
15 with building trades, training programs so that I supervise  
16 a contract between the City with an organization known as  
17 the Recruitment and Training Program, Inc. who recruit  
18 minority men interested in careers in construction.

19 Q What previous position have you had with the City  
20 of New York?

21 A My previous work before Contract Compliance was  
22 as Director of Building Trades Training Programs. I held  
23 that position from July 1969 until I became Director of  
24 Contract Compliance.

25 Q Could you describe for us your duties in that

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2 position?

3 A As Director of Building Trades Training Programs  
4 my primary function was to utilize the City's neighborhood  
5 manpower centers and to work with the recruiting training  
6 program in administering whatever opportunities may exist  
7 in the building trades in recruiting and referring men to  
8 the industry for employment.

9 Q How did the City first get involved in minority  
10 training programs?

11 A Well, in terms of my own work with the City, in  
12 1969 the City was concerned about meeting Federal guidelines  
13 in terms of grants to build housing and other projects  
14 in ghetto areas that were known as Model Cities areas.  
15 The guidelines required the employment and training be  
16 extended to residents of those ghetto areas so we were  
17 very concerned about our eligibility.

18 My assignment was to try to work out a training  
19 program with the building trades that would enable us to  
20 meet the conditions imposed upon us by the HUD Federal  
21 agency in connection with construction in Central Brooklyn  
22 Model Cities. That's basically Bedford Stuyvesant,  
23 Brownsville, East New York.

24 Q Who did you meet with in order to set up this  
25 program?

2           A     The City dealt with the leadership of the building  
3     trades industry. At that time the current Secretary of  
4     Labor, Peter J. Brennan, was president of the Building  
5     Trades Council, and his council established a special  
6     subcommittee of unions who we dealt with. I participated  
7     through the mechanism of the Building Trades Employers  
8     Association at one point, but it was primarily the Building  
9     Trades Council that we worked with.

10           Q     What type of a program or plan was initially  
11     set up?

12           A     After a period of negotiations we agreed that in  
13     the Brooklyn Model Cities area, which was our immediate  
14     concern, that the unions would go along with the program  
15     that involved the hiring and training of one minority  
16     individual for every four journeymen on a craft by craft  
17     basis. Those men were called trainees.

18           Q     Was this trainee an entry level type position  
19     or could you describe it for us?

20           A     Yes. The trainee is an entry level position  
21     analogous to an apprentice, the distinction being that the  
22     trainees were to be minority people only, they would be  
23     individuals who did not qualify for the regular established  
24     apprenticeship programs.

25                   For example, they might not have the high school

2 diploma. They could be over the apprenticeship age. They  
3 could be men who had some prior experience and, therefore,  
4 should not start as first year apprentices, but it was  
5 basically an entry level position to lead the category  
6 of journeyman.

7 Q In 1969 was that program exclusively in Bedford  
8 Stuyvesant?

9 A Yes, it was. In Central Brooklyn Model Cities,  
10 which included Bedford Stuyvesant, East New York and  
11 Brownsville, as I can recall.

12 Q Were there any Operating Engineer trainees at  
13 that time?

14 A I don't recall that we were ever able to get  
15 any trainees cleared through the Operating Engineers union  
16 for that program.

17 Q Were any attempts made to get operating engineer  
18 trainees?

19 A There were some attempts. I believe one of  
20 the construction companies, under contract to Local 15 --  
21 there was correspondence with them, but we were never able  
22 to get a trainee cleared.

23 Q After this Model Cities project were you or your  
24 office in any way involved in meetings to set up the New  
25 York plan for training?

2 A Yes, we were.

3 Q Could you tell us how that came about?

4 A Well, the City and people in the industry con-  
5 cluded that if we could have a successful minority training  
6 program in Brooklyn Model Cities we should explore extending  
7 that to all of the five boroughs of the City for all types  
8 of construction. Mr. Brennan was agreeable to exploring  
9 that with the City and with the State of New York and we  
10 had a series of meetings and negotiations basically in  
11 the year 1970 and they culminated in the adoption of what  
12 became known as the New York Plan. I believe that was  
13 signed on December 10, 1970.

14 Q Were any members of Local 14 or Local 15 in those  
15 meetings?

16 A There were people who came from the operating  
17 engineers. As I recall, the staff director of the Board  
18 of Urban Affairs, Mr. Donald Rodgers, was once with Local  
19 15, I think recording secretary. I believe his assistant,  
20 Jim Dooley, James Dooley, came from the Operating Engineers  
21 and at a later point, a much later point in time I believe  
22 there was a third person formerly an operating engineer,  
23 Richard Rodgers, but that was much later.

24 Q Were there any other representatives of the Board  
25 of Urban Affairs at those meetings?

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2 A Yes, at different occasions their chairman at  
3 that time, Thomas Broiderick, Jr. , I believe.

4 Q What was the initial number of trainees in the  
5 New York plan?

6 A I believe the industry offered an agreement for  
7 a maximum of 800 minority trainees for the first year of  
8 the program.

9 Q Do you know how that number was set?

10 A The number of 800 was something that the  
11 Building Trades Council authorized its president, Peter  
12 J. Brennan, to agree to and that maximum number of 800 was  
13 subsequently agreed upon by all the parties.

14 Q Did the New York Plan apply only to the public  
15 sector or was private sector work to be included?

16 A As written and signed, the references are to  
17 public sector work, but there was an understanding that  
18 the industry would make every attempt to extend it to  
19 major parts of the private sector. I remember there was  
20 mention made of banks, New York Telephone, Con Edison,  
21 department stores. Major private institutions were to be  
22 added in later.

23 Q Was the plan so extended to the private sector?

24 A No. To my knowledge we were never able to get  
25 it extended into the private sector.

2                   Q     What was the meaning or effect of New York City's  
3 participation in the New York Plan in terms of contract  
4 compliance?

5                   A     Well, the City then issued an executive order  
6 mandating that all contractors building for the City of  
7 New York would have to hire minority trainees referred  
8 through the mechanism of the New York Plan and it became  
9 a matter of contract obligation in order to be awarded a  
10 construction contract.

11                  Q     Have you or your office had responsibility for  
12 reviewing the effectiveness of the New York Plan?  
13                  Particularly I am talking about the placement of operating  
14 engineer trainees.

15                  A     Until the point that the City withdrew from  
16 participating in the New York Plan our office was respon-  
17 sible for recruiting, orienting, referring trainees for  
18 employment, following up by visiting sites to see how they  
19 were employed, informing contractors of their obligations  
20 and where they were not observed calling contractors in to  
21 get them into compliance.

22                  Q     Did you actually visit construction sites to  
23 verify the existence of trainees?

24                  A     Yes. We have a field staff and part of their  
25 duties would be to visit construction sites to verify the

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2 employment of these trainees, as well as other minority  
3 men required by the City.

4 Q Does this checking include a checking by race?

5 A Yes. They would verify the numbers of minority  
6 men as part of their duties.

7 Q Did it also include a checking by craft or trade?

8 A Yes. It was done on a contract by contract  
9 basis trade by trade evaluation.

10 Q Do you have field representatives who reported  
11 this information back to you?

12 A Yes. They would submit written reports indicating  
13 what the results of their site visits were.

14 Q Do they review both the quality and quantity of  
15 trainee assignments?

16 A Yes. The immediate emphasis is on the quantity  
17 of men employed. They would have the secondary responsi-  
18 bility, wherever feasible, to try to get an indication  
19 of what type of training, to also try to talk to the  
20 trainees if it didn't interfere with the production to get  
21 an idea if they had any problems and how things were going  
22 in general.

23 Q Could you describe the nature of the reports  
24 you received with respect to the quality of operating  
25 engineer trainee assignments?

2           A    Well, the general situation with operating engineers  
3    is that the training on the site was very, very unstructured.  
4    It was sort of a catch as catch-can situation . We had  
5    few, if any, trainees really involved in getting training  
6    in handling heavy equipment. Most of them were relegated  
7    to relatively unskilled titles, originally oilers.

8                         Subsequently most of them were routed out as  
9    survey trainees and mechanics helpers, but the nature of  
10   the training was very catch as catch-can.

11           Q    Is there any training other than on the job  
12    training afforded to these operating engineer trainees?

13           A    A number of them, and I would estimate a minority  
14    of the trainees had been receiving some off-site training,  
15    generally at a facility maintained near Kennedy Airport  
16    by the industry, but that would only be a small portion of  
17    the total trainees. Most of them were not extended any  
18    formal classroom orientated instruction or any off-site  
19    instructions, as far as we could determine.

20           Q    Were operating engineer trainees assigned to Local  
21    14 or Local 15?

22           A    Well, when the New York Plan agreement was entered  
23    into, it was just a general trade designation, operating  
24    engineers. We were under the assumption that it would apply  
25    to both locals 14 and 15, and in fact City contract

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specifications had some titles in there that would belong to Local 14 as well as 15. But in practice what has happened is we have never been able to clear, as far as my office records indicate, any minority trainees for any categories in Local 14. They were all assigned to Local 15, as best I can recall.

Q Is there any particular method by which operating engineer trainees are assigned to a particular job ?

A Well, if the interview of the trainee, if his application at the interview indicated some prior experience in a particular specialty of that local we would attempt or recommend to the people administering the New York Plan when we participated in it that that individual be assigned for further training in that area.

Some of the men had no previous trade experience in terms of operating engineers, so in those cases we would take or accept whatever opening was cleared through the union regardless of the category.

Q Is the City of New York still a signatoree to the New York Plan?

A No. The City withdrew from participation in the New York Plan close to two years ago.

Q Do you know the reasons for the City's withdrawal from the New York Plan?

2           A    Well, the Mayor of the City, in announcing his  
3 withdrawal, said the City withdrew because it failed to  
4 meet its objectives. It wasn't successful.

5           Q    Did he describe in what respects the City felt  
6 it was not successful?

7           MR. KENNEDY: Objection, your Honor, not unless  
8 he is talking from the documents.

9           Q    If you know from your personal knowledge.

10          A    Yes. The City's records of training employment  
11 indicated that the industry did not meet its commitment  
12 to have 800 men in on the job training in the first year  
13 of the program.

14          Q    Did the city take any further contract compliance  
15 steps when it withdrew from the New York Plan?

16          A    When the City withdrew from the New York Plan  
17 it then promulgated new affirmative action regulations  
18 that became operative in July 1973. It issued rules and  
19 regulations amending Executive Order 71 that set forth  
20 minimum ranges of minority employment on a craft by craft  
21 basis with annual stepups in those acceptable ranges over  
22 a period of time. The ultimate goal of the program was  
23 that the industry should employ journeymen in roughly the  
24 same proportion as minorities are in the population at  
25 large.

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2 Q Was there any particular figure that the City  
3 has used as a goal based on population?

4 A The City, in submitting its rules and regulations  
5 for approval to the United States Department of Labor,  
6 used a figure of approximately 38% as being the minority  
7 population in the five Boroughs of New York.

8 Q Does this apply to the operating engineers trade?

9 A It would apply to every trade including the  
10 operating engineers.

11 Q Is New York City presently attempting to implement  
12 this Executive Order?

13 A Yes, we are.

14 Q Who has the responsibility for implementing and  
15 monitoring that order?

16 A My office, the Office of Contract Compliance.

17 Q With respect to the operating engineers, have  
18 all contractors met this goal?

19 A No, they have not.

20 Q What efforts does your office make to see that  
21 the goal is achieved?

22 A When our site inspectors report violations of  
23 City regulations in terms of minority hiring of operating  
24 engineers, or any other trade for that matter, we call  
25 the contractor in to a contract compliance meeting. That

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2 meeting is a first step in an informal conference to try  
3 to get him in compliance. We notify the industry of these  
4 meetings through the Board of Urban Affairs, which rep-  
5 resents labor and management.

6 Q What type of information do you request from  
7 these contractors?

8 A Well, we first ask them if they have any dispute  
9 over what our survey of employment revealed and if there  
10 is none we ask them what steps have they taken to get into  
11 compliance, what good faith efforts have they made.

12 Q What do you mean by good faith?

13 A Well, we would define a good faith effort as  
14 an employer doing several things. One would be that he  
15 would document and show us that he has tried to employ  
16 these men.

17 For example, if we are talking about a failure  
18 to employ minority operating engineer trainees we would  
19 ask him for some evidence that he has been in touch with  
20 the New York Plan; that he submitted written requests for  
21 assignment of these trainees to his project. We would  
22 ask him if he followed that up; has he been in touch  
23 directly with the local unions of the operating engineers.  
24 We would ask him if he has tried to use other sources if  
25 he couldn't get the men through those.

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2 Q What kind of responses have you gotten from  
3 contractors relating to operating engineer trainees and  
4 operating engineer journeymen?

5 A The pretty standard responses that they are  
6 unable to get the men cleared either through the New York  
7 Plan, Inc. Office or it breaks down at the local union  
8 level.

9 Q Have you met with any representatives of the New  
10 York Plan recently to attempt to get more operating  
11 engineer trainees?

12 A Yes. As I indicated we generally notify them  
13 of all these meetings and as a rule they send down repre-  
14 sentatives. We have had meetings going on every -- you  
15 know, fairly continuously. We had a meeting in October,  
16 for example, with one of the major contractors in this  
17 industry, Peter Kieweit.

18 Q Did this meeting include any particular repre-  
19 sentatives of the New York Plan?

20 A Yes. Mr. Claudius Johnson, who is the Acting  
21 Director of the New York Plan.

22 Q Did Mr. Johnson say anything in particular at  
23 that meeting?

24 A Well, he criticized our office for putting the  
25 onus on the contractor for getting these minority operating

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2 engineers employed and he indicated the problems with the  
3 local union.

4 MR. BRADY: I am going to object to this, your  
5 Honor. This is the second or third time. This is all  
6 hearsay of what the contractors had told him and what Mr.  
7 Johnson told him. I think it should be stricken from  
8 the record.

9 MR. GLASSMAN: These are reports of this man's  
10 office of operations and meetings that took place.

11 THE COURT: I will take it. I hope it is not  
12 repetitive. I don't remember all of this having come  
13 in before.

14 Q. Are training positions actually written into  
15 the New York City bid conditions for contracts?

16 A. Yes. Before any contract is advertised or  
17 bidding City agencies are required to send to my office  
18 an estimate of the amount of manpower that will be needed  
19 on that project on a trade by trade basis and the number  
20 of weeks for each trade that they estimate will be required  
21 to build the job. Then we -- our office then gets back  
22 to the particular agency with recommendations as to how  
23 many trainee positions should be actually written into the  
24 bid specifications. We use the rule of thumb of one  
25 minority trainee for every four journeymen where practical.

2 Q Do you know approximately how many operating  
3 engineer trainees are currently employed on publicly  
4 financed work in the City?

5 A Our most recent reports indicate somewhere in the  
6 area of 60 to 70 operating engineer trainees currently  
7 employed.

8 Q Do you know how many positions of operating  
9 engineer trainees are currently available?

10 A We have written into contracts several hundred  
11 training positions. I would have to go back and survey  
12 each contract to give you an exact answer. My estimate  
13 is that for every trainee out there there could be perhaps  
14 twice as many if the trainees were permitted to be employed.

15 MR. BRADY: I am going to move to strike that,  
16 your Honor, his estimates and he has no recollection. He  
17 was asked a specific question about the operating engineer  
18 trainees and I don't think he answered that and I move  
19 to strike.

20 MR. GLASSMAN: We will follow that up with  
21 documentation, your Honor.

22 THE COURT: I would prefer the documentation.

23 MR. GLASSMAN: I will go into that right now.

24

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2 Q Mr. McNamara, I show you what I have marked as  
3 Plaintiff's Exhibit 108 and ask if you could identify and  
4 describe that document for us.

5 A Yes. This is a report from one of the members of  
6 my staff to indicate the number of training positions that  
7 are written into mayoral and non-mayoral contracts for  
8 operating engineer trainees.

9 Q Can you describe for us the headings on the  
10 succeeding pages, what they mean?

11 A Yes. The headings, first of all, list the project  
12 involved --

13 MR. KENNEDY: Objection, your Honor. If Mr.  
14 Glassman is going to offer the document in evidence I then  
15 have no objection to the witness reading from it. But as  
16 I understand it, he was simply asked to identify the  
17 document and now the witness is reading from it.

18 MR. GLASSMAN: No, I am asking for an explanation,  
19 and as soon as I offer it I will give a copy to Mr. Kennedy,  
20 after the explanation of the document.

21 THE COURT: Why don't you offer it in evidence and  
22 then he can explain. It has been sufficiently identified.

23 MR. GLASSMAN: I offer the document in evidence.

24 [Pause.]

25 MR. KENNEDY: I have no objection, your Honor.

2 MR. BRADY: No objection.

3 THE COURT: Received in evidence.

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4 [Plaintiff's Exhibit 108 received in evidence.]

5 Q Mr. McNamara, referring to what has been marked  
6 as Plaintiff's Exhibit 108 now in evidence, and referring  
7 to the second and succeeding pages, could you just describe  
8 for us the meaning of the various headings called Site and  
9 Training Assignment.10 A Yes. This report is broken down into the actual  
11 Government agency involved in construction. So for example,  
12 the first set of specifications are all for contracts under  
13 the Environmental Protection Administration of the City.14 The first column would identify where that site  
15 is, the address, and then the heading on the far right,  
16 Training Assignment, that would enumerate the number of  
17 minority operating engineer trainees and number of weeks.  
18 So that if it says, for example, 4 for 50, that means  
19 4 minority operating engineer trainees for 50 weeks of  
20 training per man.21 Q Does this list represent all of the slotted  
22 operating engineer trainees?23 A No, because, first of all, this survey was compiled  
24 in October 1, 1974, and we have additional slots.

25 Also it would not include some major state agencies,

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2 such as Battery Park City, which is basically an independent  
3 but State controlled agency, it would not include the  
4 State Housing Agency as well. There may be other omissions.  
5 It's primarily City and City agencies plus a few State  
6 agencies when the City was involved in the program. It is  
7 not complete.

8 Q Would it include a project like Starret City?

9 A No, it would not.

10 Q Is that a city or a state project?

11 A Starret City was a major housing project of the  
12 State Housing and Community Development Agency, if I have  
13 it right. It's a State project.

14 Q Does it include subway work in the City?

15 A Yes, the New York City Transit Authority would  
16 be included in here.

17 Q Does it include highway work in the City?

18 A Yes.

19 Q It does include water pollution work as well?

20 A Yes, water pollution work would be basically  
21 covered on the first heading, Environmental Protection  
22 Administration.

23 Q Does the City goal in its executive order, the  
24 one you described based on population, does that apply  
25 only to trainees, or what does it apply to?

2                    A    No. The ranges that are in effect now apply to  
3        any classification of minority manpower, whether that be  
4        a journeyman, apprentice, a helper or a trainee. The  
5        contractor can meet his minority manpower obligations  
6        through any of those categories.

7                    However, the goal of the program is to have  
8        journeymen roughly equal to the minority population, which  
9        we calculated at 38%. That would be by July 1, 1978.

10                  Q    I believe you described some earlier duties of  
11       yours relating to the recruitment and training program.  
12       Could you describe for us any relationship of that program  
13       to the operating engineers?

14                  A    Yes. I monitor and supervise that project  
15       between the City and the Recruitment and Training Program  
16       Incorporated. To relate it to the operating engineers is  
17       rather difficult, because they recruit minority apprentices  
18       as the major thing and this union does not accept appren-  
19       tices, black or white.

20                  Q    Have there been any recent efforts to set new  
21       numerical goals under a voluntary industry plan in which  
22       New York City would participate?

23                  A    Yes. I have been involved in meetings since  
24       early this year. Perhaps a dozen meetings or so have  
25       been held with the building trades industry.

2 Q Who actually participates in those meetings?

3 A The City's lead negotiator is Deputy Mayor Paul  
4 Gibson, Jr., who is my immediate chief, myself and other  
5 staff people from the City, the State of New York is rep-  
6 resented, and the Board of Urban Affairs, which is a labor-  
7 management institution, plus the president of the Building  
8 Trades and Construction Council, Mr. Thomas Tobin, and  
9 various lawyers and management, including one gentleman  
10 who isn't here right now, Robert Fink.

11 Q Have any new goals been suggested by the industry  
12 representatives on behalf of the operating engineers?

13 A No, no goals have been put forth at this time  
14 for any trade. The question of goals and timetables, in  
15 other words, numbers and so forth, has not been resolved.

16 At an earlier point in the negotiations an  
17 observation or a suggestion was made from the industry  
18 that unions who are involved in court and in litigation  
19 should not perhaps be involved in the assignment of goals,  
20 that that should be something that the Courts would deal  
21 with. That's not the position of the City and I don't know  
22 if the industry still sticks to that.

23 MR. GLASSMAN: I have no further questions of  
24 this witness, your Honor.

25 MR. KENNEDY: Your Honor, may we have a brief

2 recess. We did not know who the witness was who was coming  
3 up today.

4 THE COURT: All right.

5 [Recess.]

\*\*\*

6 CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q Mr. McNamara, do you have in front of you  
9 Government's Exhibit 108?

10 A Yes, sir.

11 Q I call your attention to the first page, where  
12 it says Total Slots 263. Are those journeymen slots, sir?

13 A No. Those slots refer to trainee --minority  
14 trainee positions as operating engineers.

15 Q What is that figure based on, sir?

16 A That figure is based on the number of training  
17 positions written into Government contracts for minority  
18 operating engineers. The method of computing those slots  
19 was to assign one minority trainee for every four journeymen  
20 in a particular craft on a craft-by-craft basis.

21 Q So, for instance, where you see H.D.A.22, that  
22 would mean that on that particular project there would be  
23 88 journeymen engineers, is that correct, sir?

24 A Let me just follow what you are referring to.  
25 Are you looking at Page 1, where it says H.D.A.?

2 Q Yes, sir.

3 A No. What that means is -- H.D.A. is an entire  
4 agency. In this instance it's the Housing and Development  
5 Administration. It could involve perhaps 15 or 20 projects  
6 under the Housing and Development Agency. It's a cumulative  
7 figure.

8 Q For what year, sir?

9 A These trainee slots would go back to the effective  
10 date of the training executive order. They would have to  
11 be no earlier than September of 1970, because the mayoral  
12 executive order was promulgated in that year.13 Q That would mean that some of those projects  
14 for H.D.A., for instance, have already been completed,  
15 isn't that correct?

16 A Yes, it would.

17 Q Does it also include projects for 1975 ?

18 A It would include projects that are in the ground  
19 now and it would include some that haven't commenced work.

20 Q That have commenced work?

21 A That have not commenced work.

22 Q Does it also include those projects which the  
23 City has decided to scrap, for instance?24 A Frankly, I would have to go back and ascertain  
25 that.

2 Q Are you familiar, Mr. McNamara, with what the  
3 City's budget is for 1975 for construction?

4 A The City's capital budget for construction as  
5 announced recently, yes.

6 Q What is it, sir?

7 A As I recall, it was only \$5,100,000 of new  
8 construction money for the capital budget year commencing  
9 July 1, 1975 through June 30, 1976 .

10 Q What was it in 1974, sir?

11 A I honestly don't recall.

12 Q Do you recall whether it was higher or lower?

13 A Oh, substantially higher, no question.

14 Q Isn't it a fact, Mr. McNamara, that for those  
15 projects that will have to be scrapped these jobs that  
16 appear on Exhibit 108 and the positions for operating  
17 engineers will have to be scrapped as well? Isn't that  
18 correct?

19 A As I said before, we would have to go back and  
20 see the latest developments in the City's capital budget-  
21 and how it affects any of these training positions. I  
22 would be glad to do that.

23 Q Again with respect to Exhibit 108, Mr. McNamara,  
24 the pages that follow the first page, are they breakdowns  
25 of the projects really listed on the first page?

2 A The first page is an overview of the following  
3 pages, yes.

4 Q Could you tell me, Mr. McNamara, why is it that  
5 certain of the notations under Training Assignment indicate  
6 the type of work whereas others do not?

7 A Yes. In some cases the agencies awarding the  
8 contract would give us a cumulative total of all of the  
9 men to be employed in the category of operating engineer  
10 and they did not attempt to break it down into a half a  
11 dozen or so particular categories. In other cases we  
12 had more detailed information and in those cases we would  
13 deal with it on a category basis.

14 Q For instance, on the second page, where it says  
15 at the top Sewer in Jerome Avenue, is that project in being  
16 right now, sir?

17 A I would not be in a position to tell you that  
18 today. We have records that would indicate the status of  
19 it in more detail. I do not have them with me this  
20 morning.

21 Q Is it possible, Mr. McNamara, that that job was  
22 completed and that there were 4 for 50?

23 A As I told you before, there are projects on here,  
24 because this is a cumulative total, there are projects  
25 on here where the trades would have been completed. The

2 answer is yes.

3 If your question is were the four training  
4 positions actually filled, my response would have to be  
5 that would be in very few cases that we were able to get  
6 those positions filled.

7 Q But there were cases that they were filled, is  
8 that correct?

9 A Oh, yes.

10 Q Do you know how many, sir?

11 A We know that approximately at this time there are  
12 60 to 70 operating engineers, trainees, working on various  
13 sites in the City of New York. We know from reports that  
14 we received from the New York Plan, until that point where  
15 the City was still involved and receiving reports, how  
16 many were placed in that trade, and I think I have a copy  
17 of such report with me. My recollection is that the  
18 operating engineers were assigned a total of 73 training  
19 positions for the first year of the program. My recollection  
20 is that they in fact did not have that many men in training  
21 at the end of one year of the program.

22 Q How many did they have, Mr. McNamara?

23 A The report I have indicates as of June 1, 1973  
24 64 men actually employed in training, an additional number  
25 received journeymen's books, about 8, I believe.

11 jhsr

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Q In other words, out of the quota of 73 for the operating engineers they filled 64 of them, is that what you are telling me?

A      No, no, no. I am indicating that through the entire life of the program, through June 1, 1973, at that point there were 64 men employed, an additional 8 who had received journeymen's books, there would be an additional number of men who dropped out or quit for whatever reasons, there would be 2 men who were awaiting re-assignment. But that would cover the entire activity from when the agreement was entered into on December 10, 1970 through June 1, 1973.

Q Let me see if I understand you, Mr. McNamara. I think you told me that the quota for the operating engineers was 73, is that correct, for the first year?

A That's my recollection, yes, sir.

Q Was that quota increased at all in the second year or the third year?

A That quota held through December of 1973. The city was then no longer a participant, but the trades' obligations overall were then increased to a grand total of 1,000 slots as opposed to the original 800.

Q That's for all of the trades though?

A That's for all of the trades. I do not have

2 all the figures with me, but I would assume, because this  
3 was true across the board, that every trade then had a  
4 small number of additional trainee assignments assigned  
5 to those trades to make up the difference from the original  
6 800 to the new total of 1,000.

2.3am

7 Q In 1970 how many minority trainees were working  
8 on jobs that were operating engineers?

9 A Calendar year 1970? I don't have those records  
10 with me, sir.

11 Q How about 1971?

12 A I do not have with me annual breakdowns for the  
13 operating engineers or any other trade. We do have  
14 records in our office though that we could go back and  
15 obtain.

16 Q But you are sure that it was not 73 that were  
17 working, is that correct?

18 A Yes.

19 Q Where did you come up with the figure of 64?

20 A From a report we received from the New York Plan  
21 for Training Incorporated. We were participants and  
22 they would supply us with data.

23 Q That would mean that in one of those calendar  
24 years up until the City withdrew from the New York Plan  
25 there were 64 operating engineer trainees working on these

2 projects?

3 A There were 64 working at the time that report  
4 was compiled. June 1, 1973 is the date of the report.

5 Q And the quota was at that time, to the best of  
6 your recollection, 73?

7 A That's my recollection.

8 Q I only have one other question, Mr. McNamara.  
9 I note that next to some of the figures in the column  
10 Training Assignments there appears the notation "(Hoisting)".  
11 What does that notation mean?

12 A Of course, I don't have a contract in front of  
13 me, but I see it's the Yankee Stadium modernization, for  
14 example, as one of them. I would assume it would have had  
15 hoisting equipment.

16 Q Are you familiar, Mr. McNamara, with the licensing  
17 requirements of the City of New York for operating hoisting  
18 equipment?

19 A Not in great detail, but I know in general there  
20 is a licensing requirement to actually operate the equipment.  
21 That doesn't mean though that you can't have other people  
22 in and around that equipment to learn the trade as helpers,  
23 oilers, maintenance men, et cetera.

24 Q But you can't touch the equipment though, is that  
25 correct?

2           A    I believe you could not actually operate the  
3            equipment, yes.

4            MR. KENNEDY:    I have no further questions.

5            THE WITNESS:    This is a training position though.

6            MR. KENNEDY: Thank you.

7            \*\*\*

8            CROSS-EXAMINATION

9            BY MR. BRADY:

10           Q    Mr. McNamara, you said you were familiar with Mr.  
11            Claudius Johnson. To the best of your knowledge, would  
12            Mr. Johnson be very familiar with the number of trainees  
13            for all trades under the New York Plan?

14           A    Mr. Johnson's office, yes. The answer is he  
15            should know how many trainees are out there.

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T3 2 Q Did Mr. Johnson ever advise you that in fact  
3 the operating engineers had exceeded their quota or goal  
4 under the New York Plan For Training? Did he ever  
5 advise you of that?

6 A Not in those words, no. He has indicated  
7 several unions refused to clear any trainees because  
8 those unions have taken a position that they were assigned  
9 a number and that at the time these discussions with Mr.  
10 Johnson would have taken place they felt that they had met  
11 that number and I think that may relate to the operating  
12 engineers as well.

13 Q That in fact they met that number and exceeded  
14 it?

15 A That was Mr. Johnson's contention, yes.

16 Q You say that there were eight people that got  
17 their union books. Isn't it a fact that 15 people have  
18 gotten books in Local 15 through the New York Plan For  
19 Training?

20 A The figure of eight that I cited was based on  
21 a report involving when the City was still participating,  
22 and that was June 1, 1973. I would not know how many more  
23 besides the eight in that report obtained books.

24 Q As far as the training that was under way for  
25 the operating engineers -- and by the way, were all these

1 gp2

McNamara-cross

2 trainees assigned to Local 15, do you know?

3 A My best recollection is that the contracts  
4 called for assignments to some Local 14 occupations, but  
5 in fact we are unable to get the men accepted by Local 14,  
6 so what I am saying is as far as I can recall virtually all,  
7 if not all, were under Local 15 jurisdiction.8 MR. BRADY: I am sorry, I think I started a  
9 question and I can't recall what the question was.

10 (Record read.)

11 Q The training that these people received, are  
12 you yourself familiar with the training; have you been on  
13 the jobs and seen it?14 A I have been on some sites, but I rely primarily  
15 on staff who visit them on a daily basis.16 Q Have you been advised by your staff that in fact  
17 the Local 15 trainees are learning the welding trade on  
18 the job?19 A I know that is an occupation within Local 15.  
20 I think that we may have some men learning welding up on  
21 the North River Water Pollution Project, but I would have  
22 to verify that.23 Q You are not sure. Have your investigators  
24 told you that in fact people are learning to operate  
25 equipment under Local 15's jurisdiction?

1 gp3

McNamara-cross

2 A Yes, but not in any systematic inclusive work.

3 It is a very haphazard thing. Some trainees are learning  
4 and some are just standby men in effect.5 Q Whenever they get the chance aren't they given  
6 the opportunity to get on that equipment? Given the dangers  
7 involved in construction equipment and in construction jobs  
8 it is rather difficult, is it not, to have a trainee  
9 operate equipment; do you know that?10 MR. GLASSMAN: Objection, your Honor. I don't  
11 quite understand the question. I am not sure what Mr. --

12 MR. BRADY: Maybe the witness understands it.

13 THE COURT: It doesn't deal with specific  
14 things.

15 MR. BRADY: Fine, your Honor.

16 Q I think you answered that, that people are in  
17 fact learning to operate construction equipment under Local  
18 15's jurisdiction; isn't that so?19 A Some of them are, but a great many of them are  
20 not receiving that instruction at the union training  
21 facility, which is an off-site construction --22 Q That's another question, isn't it? I am  
23 talking about on-the-job training for the New York Plan.24 Did your investigators ever advise you that  
25 trainees under Local 15's jurisdiction were learning to

2 operate cherrypickers?

3 A Yes, we have received information that certain  
4 small pieces of equipment have involved our trainees.

5 Q Did they include front-end loaders and bull-  
6 dozers?

7 A I believe we have a few trainees in that area.

8 Q And then there are a number of trainees, are  
9 there not, who are receiving training as mechanics, isn't  
10 that so?

11 A I believe there are some assigned to mechanics'  
12 categories.

13 Q You spoke about the recruitment and training  
14 plan. Are you familiar with Mr. Donald Raffles?

15 A Very well. He is an executive in the recruiting  
16 and training program and we confer from time to time.

17 Q If I understood you correctly, you said that  
18 recruitment and training is only concerned with obtaining  
19 apprentices. Was that your testimony?

20 A No. That is one of their obligations.  
21 Another obligation is they also recruit men as trainees  
22 for programs that the City administers, namely, the program  
23 with the Electrical Workers Union and the Plumbers Union.  
24 In addition to apprentices and trainees they also recruit  
25 men who already have journeymen qualifications and they  
attempt to get those men placed into unions.

2 Q Were you familiar, sir, with an agreement  
3 between Local 15 and Recruitment and Training whereby  
4 Local 15 has agreed to take into membership any qualified  
5 journeymen that RTP can find?

6 A I am not aware or I haven't seen any written  
7 agreement to that effect. I know that in general certain  
8 commitments were made by the building trades leadership,  
9 that they would attempt to place men, but in answer to  
10 your question, no, I have not seen any written agreement  
11 between Local 15 and RTP.

12 Q I am just talking about Local 15. You are not  
13 familiar with it?

14 A No, I have not seen it.

15 Q You said you didn't see it. Are you familiar  
16 with it at all?

17 A I am not aware of its existence.

18 Q Under the original New York Plan did New York  
19 City have any financial commitment or obligation?

20 A Yes. The City of New York had financial  
21 commitments to the New York Plan which involved matching  
22 the State of New York on a 50/50 basis for funding of that  
23 program. In addition to that, they had commitments to  
24 fund the Recruiting and Training Program to recruit men.

25 In addition to that they had funding commit-

2 ments to reimburse employers for a portion of the trainees'  
3 wages and certain types of jobs.

4 Q Did the City live up to its commitment insofar  
5 as funding the New York Plan?

6 A The City's funding to the New York Plan was  
7 lived up to dollar for dollar for the time that the City  
8 of New York was in the Plan with New York State.

9 Q How much money was put in, do you recall?

10 A Cumulatively, the Board of Estimate passed  
11 training contracts in excess of \$2,000,000. The contract  
12 for the New York Plan was funded with the City to New York  
13 State. I would have to look up the figure. Frankly, I  
14 don't have it with me.

15 MR. BRADY: I have no further questions.

16 REDIRECT EXAMINATION

17 \* BY MR. GLASSMAN:

18 Q Mr. McNamara, I believe you just testified  
19 about some conversations with Claudius Johnson. When was  
20 your office's most recent meeting with Mr. Johnson, if you  
21 know?

22 A It would be hard for me to pinpoint because  
23 we have frequent meetings. I have seen Mr. Johnson in  
24 my office in the last several weeks or so. I am sorry I  
25 can't be more specific.

2 Q I show you what has been marked as Plaintiff's  
3 Exhibit 113 for identification and I ask you if you can  
4 identify that, please.

5 Can you identify that for us?

6 A Yes. This is a report to me from Mr. Henry  
7 Estrada, who is the supervisor of Goal Enforcement in my  
8 office.

9 Q What is the date of that?

10 A The date of this report is October 18, 1974.

11 MR. GLASSMAN: I offer Plaintiff's Exhibit 113  
12 in evidence.

13 I am sorry, I don't have additional copies of  
14 this at this time, but I would be glad to show it to you.

15 MR. KENNEDY: I am going to object to this,  
16 your Honor, on the grounds it is purely hearsay and it is  
17 not binding on Local 14.

18 MR. BRADY: I join in the objection, your Honor.  
19 It is all hearsay.

20 Q Mr. McNamara, is this a report prepared in the  
21 normal course of business in your office?

22 A Yes, it is. It is a routine report, yes.

23 MR. KENNEDY: Mr. Glassman, it was an objection  
24 to the contents of the thing. I am not saying that it is  
25 not a report made in the regular course of business, but

2 there are statements contained in there from people who are  
3 not here.

4 MR. GLASSMAN: We submit the document purely  
5 as a report of a meeting and not for the truth of the  
6 statements therein.

7 MR. BRADY: I object. It is a recitation of  
8 a meeting and opinions given by people at the meeting.

9 THE COURT: Let me see it.

10 You are going to use this to refresh his  
11 recollection of when he last had a meeting with Mr. Claudius  
12 Johnson and I have no objection to the document being used  
13 for that purpose, but I will sustain the objection to its  
14 admission.

15 Q Mr. McNamara, does that refresh your recol-  
16 lection as to recent meetings with Mr. Johnston?

17 A Yes, it does.

18 MR. BRADY: If your Honor please, that doesn't  
19 even relate to a meeting with Mr. Johnson. It is a  
20 report to Mr. Johnson about another meeting -- it is a report,  
21 rather, to Mr. McNamara about a meeting Mr. Johnson had  
22 with someone else.

23 MR. GLASSMAN: I will withdraw it.

24 THE COURT: It doesn't refresh his recol-  
25 lection, then.

2 Q Mr. McNamara, you referred in your earlier  
3 testimony to a report you received from the New York Plan  
4 relating to the Operating Engineers Goal of 73. Do you  
5 have such a report with you?

6 A Yes, sir, I believe I do.

7 Incidentally, I stated before that I did not  
8 have the list of funding contracts that the City put into  
9 training programs with me. I find that I do, if that is of  
10 any value.

11 Q May I see that report, please?

12 A (Handing.)

13 MR. GLASSMAN: I would like to mark that as  
14 Plaintiff's Exhibit 114 for identification and offer it  
15 in evidence.

16 MR. BRADY: I have no objection, your Honor.

17 MR. KENNEDY: I have no objection.

18 THE COURT: It is received in evidence.

xx 19 (Plaintiff's Exhibit 114 received in  
20 evidence.)

21 Q Mr. McNamara, in looking at that exhibit can  
22 you explain to us if or where that has any reference to  
23 the original Operating Trainee Goal of 73 or a lower figure  
24 actually achieved which you testified to?

25 A The last page is a spread sheet. It is

2 labeled "Table 3." It lists all trades including operating  
3 engineers. The first numerical column, "73," relates  
4 to what the minority goals were for that particular trade.

5 THE COURT: It shows 82 actually placed, does  
6 it not?

7 THE WITNESS: The next column shows 92 actually  
8 placed, yes.

9 Q Could you explain for us the number 64?

10 A The number 64 indicates the number of men  
11 currently working. The figure 92 would include 18 men  
12 who dropped out of the program.

13 Just so we understand definitions --

14 MR. KENNEDY: I don't think there is a question  
15 on the record, your Honor, unless the witness is going to  
16 testify in narrative form.

17 THE COURT: I don't want to shut him off if he  
18 has something to ask.

19 Q Can you describe for us the meaning of the  
20 numbers on the chart?

21 THE COURT: I think they speak for themselves,  
22 don't they?

23 A Is there a particular column which requires an  
24 explanation that is not on that chart?

25 MR. KENNEDY: Objection, your Honor.

2 MR. BRADY: Oh, come on.

3 MR. KENNEDY: That was a nice try, but it didn't  
4 work.

5 THE WITNESS: I did want to make a point.

6 The point that I wanted to make is that a man -- a training  
7 goal means by definition that a man is actively employed  
8 in training on a construction site. It does not allow  
9 for the fact that more men may have been referred, some  
10 of them may have been rejected, some of them may have quit  
11 of their own volition. We consider the goal to mean how  
12 many men are actually currently employed in on the job  
13 training and that is what the figure 64 relates to.

14 THE COURT: What does the figure 92 relate to?

15 THE WITNESS: The figure 92 will also include  
16 the 18 men who quit or were fired or for whatever reason --  
17 they may have gone into the Service, whatever the particular  
18 circumstances were, but they should be replaced by another  
19 trainee, so that we do not give credit for the number who  
20 worked for one day. We only give credit if they are  
21 actively employed in the program. So the 92 includes 18  
22 dropouts, two men who are currently awaiting reassignment  
23 and it includes the eight men who became journeymen who  
24 were no longer trainees.

25 MR. GLASSMAN: I have no further questions,

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2 your Honor.

3 MR. KENNEDY: I have no questions, your Honor.

4 MR. BRADY: Nothing further, your Honor.

5 THE COURT: Thank you.

6 (Witness excused.)

7 MR. GLASSMAN: The government calls Kenneth  
8 Smallwood.

9 K E N N E T H   W E L L S   S M A L L W O O D ,   called as  
10 a witness on behalf of the government, being  
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GLASSMAN:

14 Q Mr. Smallwood, by whom are you employed?

15 A I am employed by the United States Environmental  
16 Protection Agency.

17 Q In what capacity are you so employed?

18 A I am the Director of the Civil Rights and  
19 Urban Affairs Division.

20 Q Could you describe your duties with regard to  
21 contract compliance?

22 A My duties are to implement the President's  
23 Executive Order as far as insuring equal employment  
24 opportunity on construction jobs that are funded by  
25 Federal EPA money. Usually with our agency it is water

2 pollution control waste treatment plants of which there are  
3 about ten under construction in the City of New York.

4 Q Could you identify those projects for us,  
5 please.

6 A The biggest is called the North River Project.  
7 It is in the Hudson River at West 135th Street and it  
8 runs north to about 145th Street. There is Wards Island,  
9 which is in the East River. There is Bowery Bay,  
10 which is near LaGuardia Airport. There is Jamaica Bay,  
11 the treatment plant which is near JFK Airport. There is  
12 Tallman's Island which is in Jamaica Bay. There is 26  
13 Ward, which is a Brooklyn project. Port Richman and  
14 Oakwood, which are in Staten Island. I believe that  
15 covers most of the projects.

16 Q Is the Rockaway Beach Project covered?

17 A That is another one, Rockaway.

18 Q Is the Huntspoint Project under EPA?

19 A Huntspoint, yes. That's in the South Bronx.

20 Q Is the Water Tunnel Project under your juris-  
21 diction?

22 A The Water Tunnel Project is not funded by our  
23 agency. We only fund where waste water is involved. I  
24 believe the Water Tunnel involves clean water and I believe  
25 it is funded by HUD.

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### Smallwood-direct

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3 2 Q What position did you hold before your present  
3 one?

4 A Before my present position I was the Regional  
5 Director of the Office of Federal Contract Appliance in  
6 the United States Department of Labor.

7 Q Did you have any responsibilities there with  
8 respect to Equal Employment Opportunity?

9           A        Yes, I did.    I was responsible for the  
10           negotiation of voluntary home town plans, which was the  
11           policy of the Labor Department at the time, to seek to  
12           get tripartite agreements between the community, the  
13           contract association and the building trades to provide  
14           for the entry of minorities into the industry in terms of  
15           goals and timetables based on population.

16 Q Mr. Smallwood, could you describe for us the  
17 procedures you presently use to monitor Equal Opportunity  
18 and Contract Employment Compliance?

19                   A        Well, when I came to the Environmental Protection  
20                   Agency in May of 1972 we started the procedure required  
21                   by the Department of Labor of requiring each contractor  
22                   to submit a monthly manpower report which we give the man  
23                   hours off of his payrolls of all of the crafts working on  
24                   the job broken down by the various minority ethnic groups.  
25                   Then we monitor the compliance by holding pre-award and

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2 post-award meetings with contractors and visiting job  
3 sites due to discrepancies which many times were found  
4 in the monthly manpower reports and to check out complaints  
5 from minority workers on these projects against particular  
6 crafts. In some cases there were complaints against  
7 operating engineers.

8 Q What kind of discrepancies are you referring to?

9 A Well, sometimes the head count on the monthly  
10 report, it didn't correlate with the man hours that reported  
11 or in many cases the minorities were brought on the job  
12 the latter part of the month, which would raise the head  
13 count for the month, but it would show a higher percentage  
14 by head count than you would get by doing -- by looking at  
15 the minority utilization by man hours for the entire month.

16 The other types of discrepancies were in some  
17 cases workers reported by the contractors as minorities  
18 were not in fact minorities. There was one case where  
19 the investigation showed that Italian workers had been  
20 reported as Puerto Rican workers.

21 Q Has this happened with operating engineers?

22 A Yes, it has.

23 Q Does your office verify the existence of trainees  
24 or of journeymen as well?

25 A We verify all of the minority workers that are

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2 reported by the contractors, whether they are journeymen,  
3 helpers, apprentices or trainees when we do an on-  
4 site audit.

5 Q Is there more work or less work for operating  
6 engineers in 1974 than in the past year in contracts  
7 within your responsibility?

8 A Well, on Environmental Protection Agency  
9 projects, the work for the building trades has increased  
10 because in this field the Clean Water Acts required the  
11 water be cleaned up by 1985 and based on our consolidation  
12 of all the reports I believe the work for operating engineers  
13 increased on these pollution projects by roughly 25 per  
14 cent in 1974 over 1973.

15 Q I show you what has been worked as Plaintiff's  
16 Exhibit 109 for identification and I ask you if you can  
17 identify that, please.

18 A Yes, I can identify this as a survey that my  
19 office made comparing the peak of the construction season  
20 that we saw in the month of August, 1974, with the month  
21 of August, 1973, on the pollution projects that are funded  
22 by my agency in the City of New York.

23 Q Is this based on the manpower reports which  
24 you receive on a monthly basis?

25 A Yes. This is based on the monthly manpower

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2 reports received from the various contractors.

3 MR. GLASSMAN: I offer Plaintiff's Exhibit 109  
4 in evidence.

5 MR. KENNEDY: Would it be in order if I asked  
6 the witness a short voir dire on this?

7 THE COURT: Go ahead.

8 VOIR DIRE EXAMINATION

9 BY MR. KENNEDY:

10 Q Mr. Smallwood, was this exhibit prepared on the  
11 basis of the ten projects that you referred to previously?  
12 Do you understand my questions?

13 A Yes. The 1973 figures are based on only nine  
14 projects because the Oakwood Beach Project did not start,  
15 I believe, until this year, so the ten projects would be  
16 involved in 1974, but there were nine projects in 1973.

17 Q The compilations were taken, were they not,  
18 from the contractors' reports?

19 A From the Monthly Manpower Utilization Reports  
20 submitted to us by contractors.

21 Q Do you have with you the back-up reports for  
22 these figures, that is, the contractors' monthly reports?

23 A I have it in my office. I don't have it with  
24 me.

25

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Q But did you personally prepare this, Mr. Smallwood, from those reports?

A Yes, I personally prepared this from those reports

MR. KENNEDY: I have no objection, your Honor.

MR. BRADY: No objection.

THE COURT: Received in evidence.

[Plaintiff's Exhibit 109 received in evidence.]

BY MR. GLASSMAN:

Q Mr. Smallwood, if contractors are not in compliance, what does your office do?

A Well, after a reasonable period of time, say a month, if there is no improvement in increase in minority utilization, I would issue a show cause notice, a 30-day show cause notice. The contractor is given 30 days to show that he is in compliance, or if not, that he has made a good faith effort to reach compliance.

Q What do you mean by good faith effort?

A Well, a good faith effort would mean that the contractor has attempted to live up to the contractual obligations in his contract that he would meet with the union supplying his manpower and try to get their cooperation in getting minority workers referred to the job so that the contractor can live up to his obligation under the executive order, and beyond that, advertising in the

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2 minority newspapers or going into the communities and  
3 meeting with minority group referral groups that may be  
4 able to help them recruit minority workers.

5 In other words, good faith effort means if he  
6 can get the manpower through his efforts with the union,  
7 that's fine. We don't care where he gets the minorities  
8 as long as he doesn't stop at one point and say, "I can't  
9 find qualified people, they are not coming to the job or  
10 to the union halls." We feel the burden is on the con-  
11 tractor to show that he has exhausted all possible sources,  
12 you know, in the labor market area.

13 Q Have you specifically requested contractors to  
14 contact the Operating Engineers Union?

15 A Yes. Many of the show cause notices that I  
16 issued involved the under-utilization of minority workers  
17 in the operating engineers trade and that resulted in  
18 conferences with the contractors over the problem of  
19 remedying the situation.

20 Q And what is the result of your request?

21 A Often the contractors would cite the difficulties  
22 they had in getting the unions to refer minorities in-  
23 sufficient numbers for them to be in compliance.

24 Q How many show cause orders have been issued by  
25 your agency since you assumed your present position?

2 A About 110. I know it's over 100. Roughly 110  
3 or 120 show cause notices.

4 Q Approximately how many of these have been on jobs  
5 with operating engineers in the City of New York?

6 MR. KENNEDY: Object to the form of that question.  
7 I have no objection to Mr. Glassman asking how many show  
8 cause orders relate to operating engineers, but not to  
9 jobs where operating engineers are employed.

10 THE COURT: I will sustain the objection because  
11 I don't think that would give a very clear picture.

12 MR. GLASSMAN: I will rephrase the question.

13 Q How many of these show cause orders relate to  
14 operating engineers in the City of New York?

15 A 20 to 25.

16 THE COURT: Out of a total of how many?

17 THE WITNESS: OUT of a total of about 100.

18 Q Mr. Smallwood, I show you what has been marked  
19 as Plaintiff's Exhibit 110 for identification, and ask you  
20 if you would identify that.

21 A These are copies of show cause notices that went  
22 out over my signature to contractors here in New York City.

23 Q Are these examples of the show cause orders that --

24 A Yes, these are samples of the types of show cause  
25 notices that went out. The first one I see is to Horn

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2 Construction Company on the 268th Ward Project in Brooklyn.  
3 Further down I see it lists the trades that were under-  
4 utilizing minority manpower, five trades listed here,  
5 starting with operating engineers, carpenters, dock  
6 builders, metal lathers and laborers.

7 MR. GLASSMAN: I offer Plaintiff's Exhibit 110  
8 in evidence.

9 MR. KENNEDY: I have no objection, your Honor.

10 MR. BRADY: I have an objection, your Honor, and  
11 the objection is based upon the fact that it just says  
12 operating engineers on these complaints and it doesn't  
13 say which local. There are two separate defendants here.

14 THE COURT: These complaints are directed to  
15 the contractors, not to the local.

16 MR. BRADY: Yes, that is correct, your Honor,  
17 but it states regarding the under-utilization of operating  
18 engineers, but since we have two separate and distinct  
19 defendants here, 14 and 15, I think it is unfair to permit  
20 that in the record because it may relate only to one  
21 local, the specific complaint may have related only to one  
22 local.

23 THE COURT: The Government has the burden of  
24 showing that, don't they? The exhibit is only as good  
25 as it appears.

2 Possibly some analysis of the job would indicate  
3 whether it's Local 14 or Local 15. I don't know.

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4 [Plaintiff's Exhibit 110 received in evidence.]

5 Q Mr. Smallwood, when your agency receives reports  
6 about operating engineers do you know if that refers to  
7 operating engineers under Local 14's or Local 15's  
8 jurisdiction or both?

9 A You mean complaints from minority workers  
10 regarding discrimination?

11 Q No. I am talking about the monthly manpower  
12 utilization reports on which these show cause orders are  
13 based. Do those reports when they show operating engineers  
14 relate to Local 14 or Local 15 or both, if you know?

15 A Some of the reports, the monthly manpower  
16 utilization reports, break down the operating engineers  
17 between the two locals, other reports do not, or they  
18 just consolidate all of the hours from the payroll under  
19 operating engineers without a differentiation between the  
20 locals.

21 Q What does the term operating engineers on these  
22 show cause orders refer to?

23 A On these show cause orders it refers to goals  
24 for operating engineers that were established not in terms  
25 of which local they would come from, just general goals

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2 for journeymen operating engineers, without specifying,  
3 you know, whether they were 14 or 15. So I would say  
4 our orders relate to the general classification of operating  
5 engineers without --

6 THE COURT: Without any specification?

7 THE WITNESS: Without any specification.

8 A [continuing] But from our knowledge of those  
9 reports that did give separate hours for 14 and 15 men  
10 we note that the contractors were having problems with  
11 both locals.

12 Q Mr. Smallwood, have you had any meetings with  
13 representatives of the Board of Urban Affairs with respect  
14 to Equal Employment Opportunity contract compliance?

15 A Yes. I had two major meetings with them. When  
16 I commenced work with the Environmental Protection Agency  
17 the first year I believe we issued 30 show cause notices  
18 and that caused the BUA to invite me to a meeting and they  
19 challenged my authority or they disagreed with the way that  
20 I was trying to get compliance. They even indicated that  
21 the contractors weren't required to file these reports.  
22 That was the meeting the end of the summer I believe of  
23 '73. The most recent meeting I believe was the early Fall  
24 of this year.

25 Q Who was present at the meeting this year?

4 2am

2 A James Dooley, the Deputy Director of the Board  
3 of Urban Affairs. He called me and said he wanted me to  
4 meet the new Director of the Board of Urban Affairs. I  
5 forget his name.

6 Q What did Mr. Dooley say to you regarding enforcement  
7 of Equal Employment Opportunity contract compliance  
8 provisions?

9 A He said he was unhappy with the problems I was  
10 causing contractors, that he felt I was shooting from the  
11 hip, that I could better spend my time in throwing aliens  
12 off of these construction jobs in the City to open up  
13 slots for American citizens and to spend my time doing  
14 something about the fact that non-union contractors were  
15 getting more and more work in the City as against union  
16 contractors getting this work.

17 Q Did he say anything else to you ?

18 A Yes. He said if I didn't stop in my endeavors  
19 to get more minority workers through my way of doing it  
20 on these jobs the BUA would use their clout and see that  
21 I was removed from my job, that they had a staff of  
22 attorneys who were studying my activities and they would  
23 prepare a case that would take care of me.

24 MR. BRADY: Your Honor, I am going to move to  
25 strike all of this testimony.

2 THE COURT: I don't know what this has to do  
3 with this particular case.

4 MR. BRADY: Right.

5 MR. GLASSMAN: Your Honor, Mr. Dooley testified  
6 in the defendants' case and was a representative of theirs  
7 on the Board of Urban Affairs and we just --

8 MR. BRADY: That has nothing to do with this  
9 testimony, your Honor. If this is supposed to be  
10 rebuttal it's improper.

11 MR. GLASSMAN: It relates to his testimony  
12 regarding the enforcement and possible affirmative action  
13 that was or was not taken.

14 THE COURT: I will take it, but I don't see  
15 that its connection is really overpowering.

16 MR. GLASSMAN: I will go on, your Honor.

17 Q Mr. Smallwood, what guidelines or goals are  
18 you now using in your contract compliance efforts?

19 A As of December 1st Part 2 of the bid conditions  
20 on all federally assisted work in New York City went into  
21 effect through a directive from Mr. Davis, the Director  
22 of the Office of Federal Contract Compliance in the U. S.  
23 Department of Labor in Washington.

24 Q What do these bid conditions provide?

25 A They call for percentage ranges of minority

2 utilization by craft on all jobs that are covered by these  
3 bid conditions and require all new invitations to bid on  
4 federally assisted work in New York City to direct the  
5 bidders to address themselves to these percentage ranges  
6 for each craft if their bids are to be responsive.

7 Q Is there any particular percentage range or  
8 goal for operating engineers?

9 A Yes. The range -- the current range for operating  
10 engineers would be roughly 25%.

11 Q Do you still regard the New York Plan as adequate  
12 for contract compliance purposes?

13 A Well, personally I never did, but officially  
14 the U. S. Department of Labor has -- they have not renewed  
15 their approval of that plan beyond, say, November 30th,  
16 and this directive that came out from the Labor Department  
17 dated November 27th specifically says that participation  
18 in the New York Plan for training no longer meets the  
19 requirements of affirmative action under Executive Order  
20 11246.

21 Q Mr. Smallwood, if the City is involved in funding  
22 a contract jointly with the Federal Government and they  
23 have different enforcement goals which applies on contracts?

24 A Where the City requires higher goals because of  
25 specifications they put in these contracts the higher goals

2 are required. I believe it's the Mayor's order 71 that  
3 is operative here for those projects that that was in the  
4 bid specifications.

5 MR. GLASSMAN: I have no further questions.

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6 CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q Mr. Smallwood, I call your attention to Government's  
9 Exhibit 110. I am referring now to the first page.

10 That was a complaint filed against Horn Construc-  
11 tion Company, was it not, sir?

12 A It's not a complaint. This is a show cause  
13 notice to Horn Construction Company notifying them they  
14 had 30 days to get in compliance or we were going to take  
15 debarment action to cancel their contract.

16 Q Did they comply, sir?

17 A They complied, which means they met -- they  
18 either met the minority manpower requirements or we were  
19 satisfied they had made a good faith effort.

20 Q The second show cause order relates to Andrew  
21 Catapano. Did Catapano comply, Mr. Smallwood?

22 A Yes. This was another instance of a show cause  
23 notice being listed either because the contractor was  
24 able to recruit minority manpower outside of the union  
25 process or he put more pressure on the union or in some

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2 cases the union didn't refer the minorities but we felt  
3 he made a good faith effort in trying to get people through  
4 community organizations, maybe the people the community  
5 organizations referred were not qualified, but on the  
6 overall picture, considering good faith effort, the show  
7 cause was lifted.

8 Q To save some time isn't it a fact that all of  
9 these show cause orders that are contained in Government's  
10 Exhibit 110 were lifted?

11 A No, it was not a fact.

12 Q Which ones were not, sir?

13 A I believe the one of May 20th involving Slattery-  
14 Horn-Sand, a joint venture dated May 20, 1964, the Hunts  
15 Point water pollution project, we are still having problems  
16 with this contractor on minority utilization on that job.

17 Q Does that have anything to do with operating  
18 engineers?

19 A My recollection is that it does, they are under-  
20 utilizing, still are under-utilizing minority operating  
21 engineers on that project.

22 Q It doesn't say so on that order to show cause  
23 though, does it, sir?

24 MR. GLASSMAN: Your Honor, the document speaks  
25 for itself. I would refer to the letter dated November 19,

1 12 jhsr Smallwood - cross 3813

2 1973, which does list operating engineers.

3 MR. KENNEDY: I believe that the witness was  
4 talking about the document dated May 20th.

5 Q Were you not, sir?

6 A Right. What we have here is two separate show  
7 cause notices involving the same contractor, the same  
8 project.

9 THE COURT: In the one case where the operating  
10 engineers were involved possibly that difficulty was  
11 disposed of and that is why they are not mentioned in the  
12 second letter.

13 MR. KENNEDY: I just wanted to find out if there  
14 was any situation where the operating engineers were on a  
15 job where the contractor was bumped off for non-compliance.  
16 I think the witness has answered that.

17 THE COURT: All right.

4.3am 18 Q Are there situations --

19 A The operating engineers are involved in the  
20 second show cause to Slattery. The first show cause was  
21 lifted, but we have further difficulties and continuing  
22 difficulties with Slattery, and it does involve operating  
23 engineers. It was not mentioned in that letter, but in  
24 other correspondence --

25 Q Will you please listen to the question.

2 MR. GLASSMAN: Can the witness finish his  
3 answer?

4 MR. KENNEDY: No, no. The witness was going  
5 beyond the question.

6 Q Mr. Smallwood, was the order to show cause dated  
7 June 18, 1974 against Slattery lifted?

8 A May 20, 1974 I had.

9 Q No, sir, June 18, 1974.

10 A I have --

11 Q It's the last page.

12 A No, it was not lifted.

13 Q Was Slattery bumped off the job?

14 A June 18, 1974, this is a follow-up to the May  
15 20th show cause notice, and that has not been lifted.  
16 We are still having difficulties with this contractor and  
17 he has reported he is having difficulties in meeting his  
18 manpower commitments. It includes operating engineers.

19 Q Do you know for a fact whether or not there are  
20 25% of operating engineers on that job who are minorities?

21 A To my knowledge, that is not the goal for this  
22 particular job. This job was bid on and awarded prior to  
23 the Federal implementation of the bid conditions that now  
24 require the 25%. It was before that.

25 Q What was the goal for this one for operating

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2 engineers, Mr. Smallwood?

3 A I don't remember exactly. I would think it  
4 would be in the neighborhood of 25%.

5 Q Are there 25% minority operating engineers on  
6 that job today?

7 A I don't know whether there are on that job today.  
8 I just go by the most recent manpower report. We get  
9 them the 5th of the month for the previous month. So we  
10 would have one dated -- that we received December 5th for  
11 the month of November.

12 I believe based on that report -- and we have  
13 a program in conjunction with the City's compliance program  
14 and the City has indicated there are still problems and  
15 they called a meeting recently. I was not at that meeting.  
16 So I can't be too specific about that.

17 Q What I am getting at, Mr. Smallwood, it is  
18 possible, is it not, that the operating engineers on that  
19 particular job, Slattery's job, have met the goal insofar  
20 as supplying minorities are concerned?

21 MR. GLASSMAN: Objection, your Honor. I don't  
22 know whether he should testify whether it is possible or  
23 not. He has already answered the question, I believe,  
24 as to what he knows about the present status.

25 MR. KENNEDY: I think it is perfectly proper

2 cross-examination, your Honor. I am asking him a question.

3 THE COURT: Yes, I think he can answer the  
4 question. I would rather have somebody who knows something  
5 about it rather than discuss possibilities.

6 Q Mr. Smallwood, did you understand my question?

7 A I am not sure. Could you repeat it?

8 Q Sure. What I am saying is the operating engineers  
9 could very well be in compliance on that particular job,  
10 isn't that correct?

11 A On a given day, yes. But the requirements are  
12 uniform minority utilization throughout the job. So part  
13 of our problem with Slattery was that he had been out of  
14 compliance for two years and we didn't want to let him  
15 off the hook just because he met his ranges in the last  
16 six months of the job.

17 Q I understand that. What I am saying is this:  
18 Slattery's problems relate to the plumbers, the lathers,  
19 steam fitters, the dock builders and operating engineers,  
20 that was the overall complaint, isn't that correct?

21 A Right, several trades.

22 Q Several of those unions have met their quota,  
23 have they not, sir, and some have not?

24 A That's true.

25 Q And do you know for a fact whether or not the

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2 operating engineers have met their quota on Slattery's  
3 job?

4 A As far as I know, they haven't. I know the  
5 plumbers have and the steam fitters out of that group.  
6 But the other trades, they haven't, to my knowledge.

7 Q You are absolutely sure of that?

8 THE COURT: Why don't we get a copy of that  
9 document that was received on December 5th -- that is now  
10 behind us -- and see what it says.

11 MR. KENNEDY: December 5th?

12 THE WITNESS: That was the receipt date for the  
13 November monthly manpower utilization report, which should  
14 be in my office.

15 THE COURT: You can make that available.

16 MR. KENNEDY: I have no further questions.

17 THE COURT: We will recess for lunch and come  
18 back at two o'clock.

19 MR. BRADY: I have just one question.

20 THE COURT: I beg your pardon.

21 \*\*\*  
21 CROSS-EXAMINATION

22 BY MR. BRADY:

23 Q Mr. Smallwood, you testified that contractors  
24 can seek minorities in the community to comply, isn't that  
25 so?

2           A    Yes, if they cannot get them through their normal  
3           referral system. We recognize they have collective  
4           bargaining agreements with unions that have contract  
5           clauses that require, you know, exclusive arrangements.  
6           But our policy is that is no defense to meeting their  
7           commitment, so they have to go outside of the referral  
8           system.

9           Q    Do you know which contracts and which unions  
10          require exclusive hiring hall arrangements?

11          A    Yes. We require copies of the contracts from  
12          the contractors. Any doubt, we would contact the BUA  
13          for further clarification or the union officials themselves.

14          Q    Do you know the contractual arrangements between  
15          Local 15 and their contractors insofar as referral is  
16          concerned?

17          A    Well, I know what the practice is.

18          Q    You are talking about contracts, you mentioned  
19          contracts. I am asking you if you know the contractual  
20          obligations regarding referrals between Local 15 operating  
21          engineerings and the contractors.

22          A    Well, I have a working knowledge of it, yes.

23          Q    Is it your testimony that the contractor must  
24          go through Local 15 in order to get its referrals of  
25          journeymen or apprentices?

2 A Yes, that's what contractors tell us.

3 Q That's what the contractors tell you, right.

4 Now, have you had occasion when the contractors  
5 have gone out into the community to obtain operating  
6 engineers under Local 15's jurisdiction? Do you recall  
7 any such instances?

8 A Yes, I can recall that.

9 Q And were they able to obtain the qualified  
10 journeymen in the community?

11 A In some cases, yes.

12 Q How many cases are you talking about?

13 A Well, I am thinking of a particular project,  
14 but I am sure it's happened in some instances probably  
15 on all of the projects.

16 Q Do the contractors tell you that they are able  
17 to get qualified journeymen in the community?

18 A Yes, in some cases qualified journeymen walk on  
19 their job. Then they have the problem of getting a work  
20 permit from the hiring hall so that the man can work.

21 Q You said that you weren't concerned with what  
22 the contractual obligations were. You said as long as  
23 they could get qualified people they could put them on  
24 the job, isn't that so?

25 A Well, yes. What I am referring to is a contractor's

2 problem, it's not, you know, an EPA problem.

4.4a.m.

3 Q Tell me, Mr. Smallwood, if the contractors can  
4 find these qualified men from sources other than the unions  
5 -- you say that they can always find qualified men?

6 A Not always, no.

7 Q Otherwise they would be in compliance, wouldn't  
8 they?

9 A If they documented -- made a good faith effort,  
10 right, they would be in compliance, or if they had received  
11 them through their normal sources.

12 Q Are there occasions when you find that they have  
13 made a good faith effort to find qualified operating  
14 engineers in the community and they can't locate such  
15 qualified --

16 A My experience is they are very reluctant to take  
17 that step.

18 Q That is something --

19 A And many don't take that step.

20 Q That was not the question, Mr. Smallwood.

21 A What was the question?

22 Q The question was, do you know of contractors  
23 who have advised you that they have attempted to comply  
24 by finding qualified engineers in the community and have  
25 been unable to get those people in the community.

2 A Well, usually they haven't exhausted all possible  
3 recruitment sources when they say that and I offer them  
4 a few more places to try.

5 Q But they have --

6 A Sometimes they have found a man and they relate  
7 to me difficulty they have in getting the man sanctioned  
8 by the local to work because he is not a member of Local  
9 15.

10 MR. BRADY: I will move to strike that as not  
11 responsive, your Honor.

12 I have no further questions.

13 THE COURT: All right. We will adjourn to  
14 two o'clock.

15 [Luncheon recess.]

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## 2 A F T E R N O O N   S E S S I O N

3 2.00 P.M.

4 MR. GLASSMAN: May I proceed, your Honor?

5 THE COURT: Yes.

6 MR. GLASSMAN: The government calls James  
7 Bryan.8 J A M E S   B R Y A N ,   called as a witness on behalf  
9 of the government, being first duly sworn,  
10 testified as follows:

## 11 DIRECT EXAMINATION

12 BY MR. GLASSMAN:

13 Q   By whom are you employed?

14 A   The New York State Department of Labor.

15 Q   In what capacity are you so employed?

16 A   I am a senior on-the-job training specialist.

17 Q   Can you describe for us what your responsibilities are?

19 A   Primarily I supervise a group of on-the-job  
20 training specialists in the development and monitoring of  
21 on-the-job training contracts between the State of New York  
22 and employers in New York City. I am also responsible for  
23 the operation or in charge of the office in New York City,  
24 and I also act as the local liaison person for the State  
25 of New York and the New York Plan.

1 gp2 Bryan-direct

2 Q Between the State of New York and the New York  
3 Plan?

4 A Yes.

5 Q Could you describe for us what functions you  
6 perform with respect to the New York Plan?

7 A Well, the State's responsibility is solely to  
8 recruit applicants who are interested in joining the  
9 New York Plan and also to monitor the contract.

10 Q What facilities do you have for obtaining  
11 applicants for the New York Plan?

12 A We have about 40 local offices of the New York  
13 Employment Service scattered throughout the City and if an  
14 applicant walks in and expresses an interest in being  
15 enrolled in the program, we have interviewers in these  
16 locations who will take an application.

17 Q Does your office rely on applicants walking into  
18 these offices or does the office actively recruit people  
19 for the New York Plan?

20 A Primarily walk-ins. We do no active recruitment.

21 Q If a man comes in and applies for the New York  
22 Plan, does he ask for a specific trade?

23 A He might, or oftentimes they may say just any,  
24 but we do job specifications there and the interviewer  
25 will, of course, use this as a guide along with the

2 applicant's interests.

3 Q Are there any particular specifications or  
4 requirements for operating engineer trainees?

5 A We do have those on file.

6 Q Can you describe those for us.

7 A As I recall, it is essentially an age specifica-  
8 tion of 18-plus, an educational specification of high school  
9 graduation preferred, having the physical capability to  
10 perform the job and also no fear of working at heights.

11 Q From whom does your office obtain those  
12 specifications?

13 A From the New York Plan For Training Director.

14 Q Has your office been told anything about the  
15 length of the training?

16 A Approximately two years.

17 Q If a man comes to you with prior construction  
18 experience, is that noted on his application?

19 A Yes. I have alerted the field people to  
20 indicate that in a space on the application record and my  
21 staff and my office, before sending this application to the  
22 New York Plan will put that -- underline this in red to make  
23 sure they see this man has had some construction experience.

24 Q What does your office do with the applications  
25 for the New York Plan?

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2           A       After the application is completed at the local  
3       offices, they are sent to me and I send these applications  
4       through my staff to the New York Plan on demand.

5 Q Do you know if there is a backlog of applica-  
6 tions in the New York Plan office?

7 A I would say yes.

8 Q Do you have a backlog of applicants for the  
9 New York Plan in your office?

10 A Oh, yes.

11 Q How big is that backlog for all construction  
12 periods?

13                   A        Oh, of course, it changes daily, but I would  
14                    say between 1500 and 2000.

15 Q Approximately how big is that backlog for specific-  
16 ally designated operating engineer trainees?

17 A About 250.

18 Q Mr. Bryan, I show you what has been marked as  
19 Plaintiff's Exhibit 111 for identification, and I ask you  
20 if you would identify that for us.

21           A       Yes, I can identify this as the list which I  
22           had my staff prepare for you on or about the 12th of  
23           November of those persons awaiting placement as operating  
24           engineers.

25 MR. GLASSMAN: I offer Plaintiff's Exhibit 111

2 in evidence.

3 MR. KENNEDY: Your Honor, I am going to object  
4 simply on the ground that I think this is improper rebuttal  
5 testimony at the present time. I don't know what it is in  
6 rebuttal to.

7 MR. GLASSMAN: Your Honor, this is purely in  
8 rebuttal to the alleged affirmative action taken by the  
9 defendant on the question of what people are available for  
10 a job.

11 THE COURT: That is part of his direct case.

12 MR. KENNEDY: That's right.

13 THE COURT: I will treat it as reopening their  
14 main case and you can feel free to go into it, but I hope  
15 we are not going to merely carry on what I hope is behind  
16 us.

17 MR. KENNEDY: Under those circumstances, I will  
18 withdraw the objection, your Honor.

xx 19 (Plaintiff's Exhibit 111 received in  
20 evidence.)

21 MR. GLASSMAN: I have no further questions of  
22 this witness, your Honor.

23 CROSS EXAMINATION

24 BY MR. KENNEDY:

25 Q Mr. Bryan, are you familiar with the economic

2 conditions in the building trades at the present time?

3 A No more than I read in the papers.

4 Q Isn't it a fact, Mr. Bryan, that many of the  
5 people on that waiting list are there because there are no  
6 jobs available, isn't that correct, sir?

7 A Oh, of course I would say that, yes.

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1 l jhsr Bryan - cross 3828

2 Q. In other words, as opposed to discriminatory  
3 practices.

4 MR. GLASSMAN: I would say, your Honor, if the  
5 witness knows the answer to this question. I am not sure  
6 the witness is competent to answer as to the reasons for  
7 the waiting list.

8 Q Do you know, Mr. Bryan, whether or not economic  
9 conditions have any part in the placement of trainees?

10 A Well, I think that's general knowledge. Affirma-  
11 tive, yes.

12 MR. KENNEDY: I have no further questions.

13 MR. BRADY: I have no questions. Thank you,  
14 Mr. Bryan.

15 (Witness excused.)

16 MR. GLASSMAN: The Government calls Jacob Grill.

17 J A C O B G R I L L , called as a witness in behalf  
18 of the plaintiff, being first duly sworn, testified  
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. GLASSMAN:

22 Q Mr. Grill, by whom are you employed?

23 A New York City Building Department.

24 Q In what capacity are you so employed?

**A** I am the Director of the Division of Cranes.

1 2 jhsr

Grill - direct

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2 Derricks, hoisting and rigging of the Department of  
3 Buildings, a division of the Department of Buildings.

4 Q How long have you been so employed?

5 A Six years approximately.

6 Q What is your educational background, sir?

7 A I am a graduate civil engineer and a professional  
8 engineer licensed by the State of New York.

9 Q What type of positions did you hold prior to  
10 your present one?

11 A I have held various structural engineering jobs  
12 since 1950, at which time I graduated from school, and  
13 most of my experience has been in the materials handling  
14 business, design of movable structures for materials  
15 handling.

16 Q What were your initial responsibilities as  
17 director of the New York City Division of cranes, derricks,  
18 hoisting and rigging?

19 A I was hired from the private sector to start up  
20 and organize a section in the Department of Buildings  
21 which would incorporate the hoisting and rigging section  
22 which they had at that time, which was an inspectional  
23 section, and it was to be expanded with an engineering  
24 section, which was to be hired, provided that the legisla-  
25 tion which was being written at the time that I was hired

would be passed.

In other words, I was to head up a new division with the Building Department whose main function was to inspect and analyze the cranes and derricks operating in the City of New York.

Q What are the current responsibilities of your division?

A At the present time we -- our inspectional section inspects all hoisting equipment in the City of New York -- when I say all hoisting equipment, the equipment that is under our jurisdiction -- and we also analyze all new equipment coming into the City from an engineering standpoint so far as structural capabilities is concerned or structural integrity.

Q Does your division have any responsibility with regard to checking to see if men have licenses?

A Yes. At any time that any of our inspectors are sent to a specific site we always check to see if the man is licensed on the machine.

Q Are you now referring to a hoist machine operator's license?

A Yes, sir.

Q If a man has not renewed his license what is the effect of the non-renewal?

2  
A He is unlicensed.3  
Q Under what statute or regulation are you operating  
4 in determining when a license is required?5  
A Well, Local Law 73, which was -- of 1969, which  
6 was passed in December of 1969, is part of the building  
7 code, and that outlines what licenses are required.8  
Q Did you have any role in preparing that legisla-  
9 tion?10  
A Yes. I was instrumental in helping to write the  
11 legislation.12  
Q I show you what has been marked as Plaintiff's  
13 Exhibit 112 and ask you to identify that.14  
A This is a copy of Local Law 73, the legislative  
15 section, and the reference standards which are part of the  
16 local law.17  
MR. GLASSMAN: I offer Plaintiff's Exhibit 112  
18 in evidence.19  
MR. KENNEDY: Again, your Honor, I don't know  
20 what this is in rebuttal to. I think we have already had  
21 testimony on the affirmative cases for both sides on what  
22 the law is.23  
THE COURT: I don't know what the relevance of  
24 it is. We don't have a jury. I will take it.25  
[Plaintiff's Exhibit 112 received in evidence.]

2 Q Mr. Grill, could you describe for us what equipment  
3 requires and what does not require a hoist machine  
4 license to operate?

5 A Basically all hoisting equipment which does  
6 work on buildings or the construction of buildings requires  
7 a license. Earth moving equipment, such as backhoes,  
8 bull dozers, front end loaders, machines that are normally  
9 not used in the erection per se of a building, are exempt  
10 from the legislation. Their exemption is spelled out  
11 in the legislation, but this more or less summarizes it.

12 Q Does a scraper require a license to operate?

13 A No.

14 Q You mentioned backhoes are exempt. Does this  
15 include cable and hydraulic backhoes?

16 A I would say it does. We don't inspect that  
17 sort of equipment.

18 Q Does it include big or small backhoes?

19 A All backhoes are exempt.

20 Q Does a power shovel require a license to operate?

21 A No, it does not.

22 Q Does a grade-all?

23 A No.

24 Q Does a tunnel mucking machine?

25 A No.

1 6 jhsr

Grill - direct

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2 Q Does a back-filling machine require a license to  
3 operate?

4 A No.

5 Q Does a compressor?

6 A No.

7 Q Does a well point pump?

8 A No.

9 Q Does a concrete mixing machine?

10 A No, it doesn't.

11 Q Does a welding machine?

12 A No.

13 Q Does a spreader?

14 A No.

15 Q Does a locomotive?

16 A No.

17 Q Does a roller?

18 A No.

19 Q Does a drag line?

20 A Offhand, I would say a drag line does not require  
21 a license.

22 Q Does the City's licensing jurisdiction include  
23 all work within the boundaries of New York City?

24 A It does not. It does not include agencies such  
25 as the Port Authority, the New York State Dormitory

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Grill - direct

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2 Authority, the Urban Development Corporation and agencies  
3 of this nature.

4 Q When you say it does not include the Port Authority,  
5 would it include the World Trade Center?

6 A It does not include the World Trade Center. We  
7 have no jurisdiction there at all.

8 Q Would it include the airports?

9 A No. That's Port Authority.

10 Q Would the City's jurisdiction include work per-  
11 formed for the Tri-Borough Bridge and Tunnel Authority?

12 A It does not.

13 Q Does it include tunnel work?

14 A Well, if it's open cut for MTA, for Metropolitan  
15 Transit Authority, we do have jurisdiction there.

16 Q Other tunnel work?

17 A No, it does not, not on other tunnel work. But  
18 if there is a crane in the street for an open cut for a  
19 subway, we do have jurisdiction there.

20 Q Is it correct that all of the work you just  
21 described as exempt does not require a City license for a  
22 man to operate on that equipment?

23 A That's correct.

24 THE COURT: Does it require any license?

25 THE WITNESS: I guess it requires some sort of

2.2pm

2 a chauffeur's license or a State license. I am not sure  
3 about that.

4 Q Do you know what licenses if any it requires?

5 A No, I don't.

6 Q Who on your staff actually performs the inspections?

7 A We have an inspection force of approximately  
8 eight people, a chief inspector and an assistant chief  
9 inspector.

10 Q Who is your chief inspector?

11 A George Durkin.

12 Q Does your department perform inspections of  
13 long boom cranes?

14 A Yes, it does.

15 Q Must a long boom crane be inspected on any job  
16 site at which it is used?

17 A Any machine over 250 foot boom length is inspected  
18 at each and every site upon assembly.

19 Q Approximately how many long boom cranes are  
20 currently being used in the City?

21 A At the present time?

22 Q Yes.

23 A Very few, because of the construction slowdown.

24 Q Approximately how many?

25 A Right now, I would say about four or five, to

2 my recollection.

3 Q Approximately how many long boom cranes are  
4 registered in the City at the present time, if you know?

5 A I don't have the exact figure, but I can give  
6 you an estimate of about 25.

7 MR. GLASSMAN: I have no further questions of  
8 this witness, your Honor.

9 \*\*\*  
CROSS-EXAMINATION

10 BY MR. KENNEDY:

11 Q Mr. Grill, some of the equipment that ordinarily  
12 doesn't require a license is adaptable to have lifting  
13 equipment put in its place and change its operation, isn't  
14 that correct?

15 A Yes, it is.

16 Q When that equipment has the lifting or hoisting  
17 operations on it does that then require a license?

18 A Yes, it does.

19 Q Does the operation of all types of cranes in the  
20 City of New York require licenses?

21 A Well, I just described those -- you mean cranes  
22 with laced booms or hydraulic machines?

23 Q Yes.

24 A Basically I would say yes. There are some cranes  
25 which are exempt from -- there are three types of -- when

2 you say licenses, you are talking specifically about an  
3 operator's license?

4 Q Yes, I am, sir.

5 A Basically every machine which is not exempt,  
6 which we mentioned before, needs some sort of operator's  
7 license. There are three types, an A, B and C license.

8 Q With respect to the A and B licenses, would  
9 they cover derricks of various kinds?

10 A Yes. There are special licenses for -- if a  
11 man only operates a derrick normally he would require just  
12 a special. But a man that can operate an A machine is  
13 also qualified to operate a derrick.

14 Q What about pile drivers, sir, where it's done  
15 in City jurisdiction?

16 A Pile driving equipment does require a license  
17 because the machine has to be moved from spot to spot.

18 Q So it would be cranes, derricks --

19 A And hoisting equipment.

20 Q Those include the elevators that run up --

21 A No, we don't have jurisdiction over elevators.

22 We have jurisdiction over what we call Chicago booms, gin  
23 poles. The Chicago boom is nothing more than a piece of  
24 equipment which is attached to the crane on the outside  
25 of the building in order to lift up to the various floors.

end take.

2 T3 Q How many cranes other than long boom cranes  
3 would you estimate are operative in the City of New York?

4 A I would say all in all we have been -- in the  
5 vicinity of about 14 to 15 hundred machines which are  
6 registered with us, long boom cranes are included.

7 There must be 25 to 30, something like that.

8 Q And they would all require licenses, would they,  
9 sir?

10 A Yes, sir.

11 Q Would derricks fit into that category as well?

12 A Yes. Derricks are included in this 14 to 15  
13 hundred machines.

14 Q You visited various job sites in building con-  
15 struction, I assume, from time to time, is that correct?

16 A Yes.

17 Q Are you familiar, sir, with the jurisdiction  
18 of Local 14 insofar as the machinery that they operate?

19 A I believe I am.

20 Q Are you able to tell us, sir, on a particular  
21 job site what percentage of equipment would be licensed  
22 as opposed to unlicensed? I am referring specifically to  
23 the work that operating engineers would do.

24 A At any building site, any equipment which is  
25 used to construct the building, any hoisting equipment,

1 gp2 Grill-cross  
2 all requires licenses, every piece of equipment.  
3 MR. KENNEDY: I have no further questions.  
4 MR. BRADY: I have no questions, your Honor.  
5 MR. GLASSMAN: No questions, your Honor.  
6 THE COURT: You are excused.

7 (Witness excused.)

8 MR. GLASSMAN: The government calls George  
9 Durkin.

10 G E O R G E F. D U R K I N, called as a witness on  
11 behalf of the government, being first duly  
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GLASSMAN:

15 Q Mr. Durkin, by whom are you employed?

16 A The New York City Department of Buildings.

17 Q In what capacity?

18 A Five-Borough Chief Inspector, Crane & Derrick  
19 Division, and also included is the Hoist & Rigging Division.  
20 It is one separate division.

21 Q Have you personally operated heavy equipment?

22 A Yes, sir, I have.

23 Q Can you describe for us your background prior  
24 to joining the Department?

25 A Well, out of high school and I went to work for

1 gp3

Durkin-direct

2 Jay Rich Steers, Inc. building the East River Drive, the  
3 section between 79th Street and 120th Street. I worked  
4 on a floating derrick.

5 Q Where did you work after that?

6 A What was that, sir?

7 Q Where did you work after that?

8 A After that I worked for the Tidewater Oil  
9 Company, East 22nd Street, Bayonne, New Jersey, an oil  
10 refinery.

11 Q What experience did you have as to that?

12 A Well, I went into the Military, the U.S. Coast  
13 Guard, and at one point in my service I was assigned to a  
14 repair base in which I operated cranes and hoists of various  
15 types.

16 Q When and how did you become an inspector for  
17 the City of New York?

18 A I took a competitive examination and passed and  
19 was appointed on February 6th of 1951.

20 Q Under what law or regulation are you currently  
21 operating?

22 A Local Law 73 of 1969.

23 Q Did you just hear the testimony of Mr. Grill?

24 A Yes, sir.

25 Q Do you as Chief Inspector apply the same rules

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Durkin-direct

2

as regards what equipment or work requires a New York City  
license as described by Mr. Grill?

4

A Yes, sir.

5

Q Were the same procedures or requirements followed  
prior to 1969?

7

A Prior to 1969 we had only a simple set of  
rules that was forthcoming in 1958, so the same law did not  
apply prior to 1969.

10

Q In the 1960s did the City inspect for licenses?

11

A Our division was only connected with existing  
buildings and riggers' licenses and in the course of  
rigging at times cranes were used to hoist various objects  
in or out of the buildings, and at that time we did ask for  
the license.

16

Q When were inspections for licenses started?

17

A Local Law 73 I believe was passed in December of  
1969 and became effective in January of 1970.

19

Q What type of license was required before 1969?

20

A It was known as AMPES, Any Mode of Power Except  
Steam.

22

Q Was there any equipment that required inspection  
and a license, an AMPES license to operate before 1969 but  
did not require a license, an A, B or C license after 1969?

25

A This is a vague area, because -- to answer your

2 question correctly, because the Boiler Division of the  
3 Department of Buildings was the issuing agency for the  
4 licenses and they had the necessary controls to enforce  
5 it. We did not enter the licensing area per se for all  
6 types of equipment except what was under the jurisdiction  
7 of our division.

8 Q Was there any particular equipment that was  
9 exempted under the new law that required a license under  
10 the old law?

11 A Yes. I believe Mr. Grill reiterated the  
12 different types that were exempted.

13 MR. GLASSMAN: I have no further questions of  
14 this witness.

15 CROSS EXAMINATION

16 BY MR. KENNEDY:

17 Q Mr. Durkin, prior to 1969 what did the AMPES  
18 license cover?

19 A Practically every type of machine, I do believe,  
20 as again I would have to say that my division did not handle  
21 the controls over this type of license.

22 Q Was there also a portable steam license?

23 A I believe so.

24 Q Do you know what that covered, sir?

25 A I am not -- I can't give you an efficient

2 answer on that.

3 Q . . . But there were certain pieces of equipment on  
4 job sites that required steam licenses as opposed to AMPES  
5 licenses, is that correct?

6 A I do believe that.

7 Q After 1969 the AMPES license became what?

8 A Hoisting machinery operator's license.

9 Q That was either A or B, sir?

10 A A, B or C.

11 Q Is there still a portable steam license, to  
12 your knowledge?

13 A There is no mention of a portable steam license  
14 in Local Law 73.

15 Q Do you know of any equipment on job sites today  
16 that require a steam license?

17 A I can only answer your question in this manner:  
18 piledrivers, when they use a steam boiler on the rear of  
19 the piledriver the boiler is inspected by our boiler  
20 division and they require a portable steam.

21 MR. KENNEDY: I have no further questions.

22 MR. BRADY: I have no questions, your Honor.

23 MR. GLASSMAN: I have no further questions,  
24 your Honor.

25 THE COURT: You are excused.

(Witness excused.)

2 MR. GLASSMAN: Your Honor, the government has  
3 no further witnesses. We do have a number of exhibits  
4 we would like to introduce at this time, though.

5 I would first like to offer Plaintiff's  
6 Exhibit 10-A, which are selective Local 14 and 14-B  
7 meeting minutes. Plaintiff's Exhibit 10 contained Local  
8 14 and 14-B regular minutes. These are added to that  
9 exhibit.

10 MR. KENNEDY: May I ask your Honor whether  
11 this is part of the government's direct case now or is this  
12 rebuttal?

13 THE COURT: Mr. Glassman?

14 MR. GLASSMAN: Actually it is a bit of both.  
15 Some of the information in those minutes rebuts some in-  
16 formation, and we also understood at the close of the  
17 direct case that we would be allowed to add additional  
18 minutes just to complete the record.

19 THE COURT: All right.

20 MR. GLASSMAN: We have no objection if Mr.  
21 Kennedy would like to offer any other minutes subsequently.

22 MR. KENNEDY: That isn't so much my point,  
23 your Honor. It is that I had assumed that this was going  
24 to be strictly rebuttal. Now I have got to look at it  
25 from the standpoint if it is a reopening of their case

whether or not I need time to put in additional proof.

MR. GLASSMAN: It actually does rebut testimony.

THE COURT: That is your right. As I have already indicated, it certainly was not proper rebuttal, but you could consider it as the government having reopened its main case and you can proceed as you may be advised.

MR. KENNEDY: What I can do is this, your Honor, so as not to hold up the proceedings. I have no objection. They are minutes of the meeting. If the government is going to rest today, I would like at least a day to look over these things to see them.

THE COURT: Surely.

MR. KENNEDY: Thank you, your Honor.

MR. BRADY: I have no objection to that.

xx 16 (Plaintiff's Exhibit 10-A received in  
17 evidence.)

18 THE COURT: I think all the judges of the court  
19 ought to take up a fund that would purchase some new  
20 duplicating machinery.

21 MR. GLASSMAN: Your Honor, I think we share  
22 that problem. Some of those documents were actually the  
23 originals supplied to us and our duplicating machinery  
24 unfortunately is no better.

25 MR. KENNEDY: It makes it interesting when you

2  
are trying to write a brief, your Honor.

3  
4  
MR. GLASSMAN: Some of the final documents in  
there are more legible than some of the earlier ones.

5  
6  
THE COURT: I hope that the important ones are  
the legible ones.

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MR. GLASSMAN: I would like to offer at this  
time Government's Exhibit 91-B. This is a substitute for  
the 91-B earlier which was withdrawn. Plaintiff's Exhibit  
91 was an alphabetical list of union membership in Local 14,  
14-B, indicating average annual earnings in the years 1971  
to 1973. The plaintiff's proposed Exhibit 91-B further  
breaks that down with actual earnings in each of the years.

MR. KENNEDY: Your Honor, I have no objection  
to this being offered at this time. I might say that I  
have talked to the government about this particular exhibit  
and I will consent to it going in subject to my checking  
to see whether the markings on the previous exhibit are  
placed on this one. I just havent had a chance to study  
it, that's all.

MR. GLASSMAN: That is all right, your Honor.

THE COURT: All right, received.

(Plaintiff's Exhibit 91-B received in

23  
24  
evidence.)

25  
MR. GLASSMAN: Your Honor, we have asked the

2 defendants for a stipulation, since we believe it is so,  
3 that Local 14 and 15 have not filed certain Equal Employment  
4 Opportunity EEO-2 reports relating to joint apprenticeship  
5 programs which we were willing to offer as Exhibit 104.  
6 I believe Mr. Brady was to check on that and perhaps we  
7 can keep the record up for the purpose of either a stipula-  
8 tion or an affidavit or letter from the EEOC to that  
9 effect.

10 THE COURT: Is that all right, Mr. Brady?

11 MR. BRADY: Yes, I will check on it, but I  
12 just would like to note that the government on the first  
13 day of trial withdrew that claim in the complaint, or  
14 allegation in the complaint having to do with the misfiling  
15 or failure to file appropriate reports. So I am not quite  
16 sure what this --

17 MR. GLASSMAN: It is not for that purpose.

18 THE COURT: It is not being received for that  
19 purpose as far as the Court is concerned.

20 MR. GLASSMAN: That is correct.

21 We have nothing further, your Honor. The  
22 government rests.

23 There is one stipulation which Mr. Brady would  
24 like to offer.

25 MR. BRADY: We have one stipulation, your

2 Honor, which I would like to offer into evidence. It  
3 shows the approximate known membership of minorities in  
4 Local 15 from January, 1964, to January, 1974. It is  
5 based upon the IBM runoff that was Exhibit 99.

6 THE COURT: Don't we have something like this  
7 already in the record?

8 MR. BRADY: You know, your Honor, I must  
9 confess that my recollection failed me on that point.  
10 I tried to ascertain it by going through the record and  
11 I simply couldn't find it and when I asked the government  
12 this morning they weren't sure either.

13 THE COURT: It won't do us any harm. Let's  
14 have it.

15 MR. BRADY: I think we may have stipulated to it,  
16 but I didn't introduce it.

17 THE COURT: It is just somewhere in the back  
18 of my mind.

19 MR. BRADY: I have the same --

20 MR. DEVORKIN: Mr. Corcoran and I had a dis-  
21 cussion about this piece of paper and I think the paper  
22 may not have actually come in.

xx 23 (Defendant Local 15 Exhibit I received in  
24 evidence.)

25 MR. BRADY: Thank you.

2 THE COURT: I am sure I saw this before.

3 As I say, it may have been the subject of discussion.

4 MR. BRADY: That may have been. Thank you.

5 THE COURT: What I will do is accomplish  
6 everything that we can accomplish except for Mr. Kennedy's  
7 checking on those various documents that have been referred  
8 to, which I woul' hope could be done by the end of next  
9 week, in any event, and then work out among yourselves  
10 the submission of papers.

11 I have received no papers from the unions on  
12 the matter of their proposed preliminary order dealing  
13 primarily with the practices, so I really haven't given  
14 them any study.

15 MR. KENNEDY: What we did, your Honor, was  
16 we got up the papers as quickly as possible. We were only  
17 served on Monday.

18 THE COURT: Okay. I will look them over and  
19 then I will be in touch with you before I do anything one  
20 way or another.

21 MR. KENNEDY: Thank you.

22 MR. DEVORKIN: Your Honor, would it be your  
23 intention to entertain argument on that motion or would  
24 you like a legal submission on that? We would be prepared  
25 to do that.

2 THE COURT: I will entertain argument. Some-  
3 times I don't find argument so entertaining, but if you  
4 want to I will be glad to hear you next week some time.  
5 I would just as soon get the papers, any papers that you  
6 want to submit, and then if I feel that argument would be  
7 of some help I will get in touch with you and we will set  
8 it down for argument.

9 MR. KENNEDY: That would be fine, your Honor.

10 MR. BRADY: Thank you.

11 MR. DEVORKIN: Thank you.

12 MR. KENNEDY: Your Honor, may we take the  
13 opportunity to thank you for your courtesy during the  
14 trial.

15 MR. BRADY: We join in that.

16 THE COURT: Have a nice holiday.

17 MR. DEVORKIN: Same to you, your Honor.

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WITNESS INDEX

|   | <u>Name</u>             | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
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| 3 | James Francis McNamara  | 3754          | 3776         | 3790            |                |
| 4 |                         |               |              |                 |                |
| 5 | Kenneth Wells Smallwood | 3796          | 3811         |                 |                |
| 6 | James Bryan             | 3822          | 3826         |                 |                |
| 7 | Jacob Grill             | 3823          |              |                 |                |

EXHIBIT INDEX

|    | <u>Plaintiff</u> | <u>Identification</u> | <u>Evidence</u> |
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| 12 |                  |                       | 3772            |
| 13 | 114              |                       |                 |
| 14 |                  |                       | 3793            |
| 15 | 109              |                       |                 |
| 16 |                  |                       | 3802            |
| 17 | 110              |                       |                 |
|    |                  |                       | 3806            |
|    | 111              |                       |                 |
|    |                  |                       | 3826            |
|    | 10-A             |                       |                 |
|    |                  |                       | 3844            |

19                   Defendant  
20                   Local 15

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